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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,130	10/18/2001	Robert M. Rello	A-1674	2064

33197 7590 03/25/2003

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IRVINE, CA 92618

EXAMINER
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PURVIS, SUE A

ART UNIT	PAPER NUMBER
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1734

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DATE MAILED: 03/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

10/042,130

Applicant(s)

RELLO ET AL.

Examiner

Su A. Purvis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 requires “a rotatable vacuum drum assembly comprising a three-ported valving system.” The only location in the specification that the examiner could find mention of the ‘three-ported valving system’ is on page 18, line 14. Here, the applicant states, “the above described innovative three-way (three ported) valving system.” However, it is unclear from this statement exactly what the applicant considers to be the ‘three-ported valving system.’ The description above this statement includes several features of the vacuum drum, but there is no clear indication which, or if any, of these features are part of the three-ported valving system and which are not. Clarification is required.

The purpose of the ‘three-ported valving system’ for the applicant is to enable the vacuum to stop for a portion of the drum. For examination purposes, the examiner has assumed that a reference that teaches that resulting feature, includes an equivalent of a ‘three-ported valving system.’

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickey (US Patent No. 5,160,570) in view of Andrew (US Patent No. 5,107,978) and Trine Quick Change 4500 or NJM Thorobred 350.

Dickey discloses a labeling apparatus with a conveyor (6) for moving the articles to be labeled, an infeed screw (3), a rotatable starwheel (5), a rotatable vacuum drum, and a supply of roll fed labels (20). (Col. 2, lines 48-68; Col. 3, lines 21-25.)

Dickey does not disclose an infeed screw assembly with means for pivoting the feed screw both horizontally and vertically.

Andrew discloses a distribution apparatus which uses feed screws (20). The feed screws (20) are adjustably mounted both for height above the conveyor (10) and for horizontal distance between their centers to accommodate different height and different width articles being distributed. (Col. 3, lines 55-63.)

Both NJM and Trine pamphlets disclose labeling machines which are adaptable for labeling articles of different sizes. Both discuss the use of changing parts.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Dickey adaptable for labeling articles of different sizes by having the feed screw adjustable both horizontally and vertically as taught by Andrew. Both Trine and

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NJM teach that it is known in the art to have a labeling machine be modified to adapt to labeling articles of different sizes. These pamphlets, however, discuss using interchangeable parts. It is within the purview of the artisan to know that a more efficient means of adapting a machine to change for articles of variable sizes would be to make the infeed screw of the labeling machine able to shift as shown in Andrew.

5. Claim 2 rejected under 35 U.S.C. 103(a) as being unpatentable over Voltmer (US Patent No. 4,647,333) in view of Dickey or King et al. (US Patent No. 4,758,300).

Voltmer discloses a labeling apparatus with a conveyor (201) for moving the articles to be labeled, an infeed screw (203), a rotatable vacuum drum (202), and a supply of roll fed labels (19). (Figure 1.) The vacuum drum includes 'on-off' action which is regulated by a stationary vacuum timing valve plate (6) interposed between the source of vacuum and the applying drum. The drum (202) includes a wheel portion (305) and a ring portion (308), which rotate together. The ring portion (308) provides vacuum connection between the passages (303) of the wheel portion (305) and the arcuate carrying ports as well as the ports of the valve plate (6). The carrying ports allow for selective control of the suction holes (208) on the mouthpiece (4). (Col. 3, line 51 through Col. 4, line 57.)

Voltmer does not disclose a rotatable starwheel.

Dickey discloses a labeling apparatus with a conveyor (6) for moving the articles to be labeled, an infeed screw (3), a rotatable starwheel (5), a rotatable vacuum drum, and a supply of roll fed labels (20). (Col. 2, lines 48-68; Col. 3, lines 21-25.)

King discloses a labeler with a conveyor (5), an infeed screw (8), a rotatable starwheel (10), a rotatable vacuum drum (12), and a supply of labels (20). (Figure 1.)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a starwheel in the device of Voltmer, because it is known in the art of labeling to use a starwheel to advance an article to a vacuum drum as shown in both Dickey and King. Furthermore, the use of the starwheel is within the purview of the artisan and a matter of machine design choice.

### *Conclusion*

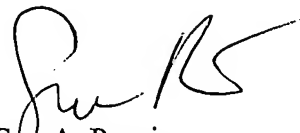
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carter (US Patent No. 3,841,946) discloses feed screws (24) including means for moving the screws relative to the station for the purpose of adjusting the arrival of the containers at the station in timed relation to the label operation. (Col. 2, lines 2-8.) Willerding (US Patent No. 4,660,708) discloses a device including a screw (6) which is able to move horizontally by means of an adjusting piston (11). An alternative means of moving the screw (6) is having the screw tilted about a shaft (14) which results in an arcuate tilting movement of the screw. (Col. 3, lines 27-37; Col. 4, lines 19-32.)

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is 703-305-0507. The examiner can normally be reached on Monday through Thursday 8am to 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 703-308-3853. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-1495.

A handwritten signature in black ink, appearing to read 'Sue A. Purvis', with a stylized flourish at the end.

Sue A. Purvis  
Examiner  
Art Unit 1734

sp  
March 20, 2003